IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8134 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI SHANKARBHAI WAGHELA

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR DP VORA for Petitioner

M/S PATEL ADVOCATES for Respondent Nos.1 to 3.

Mr.Digant P. Joshi, AGP for M/s Patel Advocates.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/04/2000

ORAL JUDGEMENT :

The present petition is filed seeking relief to the effect that the petitioner be appointed either as full time permanent sweeper or full time permanent peon from the date on which the junior to the petitioner, Shri

Dharmshibhai Ghelabhai Desai came to be appointed as a permanent sweeper.

2. This Court issued notice on 24.9.1998. Thereafter, the matter was adjourned from time to time and lastly on 5.3.1999, the Court issued rule. On 27.3.2000, it was ordered that the main matter be placed for final hearing on 11.4.2000. Today, also when the matter is called out for final hearing there is no reply filed by the respondents. The reason of not filing reply seems to be that no averments in the petition can be controverted as the same stand supported by necessary documents and also the Government Circulars in favour of the petitioner. It is the case of the petitioner that the petitioner came to be appointed as a part time sweeper in the office of the Stamp Duty Valuation organization on 8.8.1984 and he was given work for 1 hour per day and wages were fixed at Rs.47.50 per month. The appointment order is at Annexure 'A'. Mr.Vora for the petitioner bases his claim on Government Circular dated 26.12.1980, which is issued to the heads of all the departments to consider the question of appointing part time employees on permanent basis. Said circular says in para 2 that as and when a part time employee continues for three years, the head of the department shall consider the case of such part time employee against the vacancy arising on the permanent post and he should put his efforts for such appointment on permanent basis.

3. Mr.Joshi is not in a position to defend this indefensible case. Mr.Joshi is not able to say anything contrary to the said circular dated 26.12.1980. It goes without saying that the said circular holds the field till today.

4. Mr.Vora for the petitioner has also placed on record a circular dated 23.8.1982 and the rules framed under Article 309 of the Constitution of India entitled, "Peon (Non Secretariat) Recruitment Rules, 1982. It is the case of the petitioner that the petitioner was working since 1984 as a part time sweeper, the Department did not consider his case for absorbing him on a permanent post though the petitioner made repeated representations/ reminders to the authorities. One such representation is at Annexure 'E' dated 12.4.1989. Though number of representations/ reminders made by the petitioner were pending before the authorities, the authorities have appointed two persons, one as waterman and the other as a sweeper (Shri Dharamshibhai Desai). The appointment order dated 16.3.1990 of said Shri Desai is at Annexure 'F' to the petition. Said Shri

Dharamshibhai Desai was given the appointment on 4 hours basis. No explanation is coming forward as to why the petitioner's case was not considered by the authorities when the petitioner was working in the same office since 1984. Not only that even thereafter the petitioner continued to make representations to the authorities, which went in vain. Thereafater, said Shri Dharamshi Desai was assigned the work for six hours by letter dated 5.8.1991, a copy of which is at Annexure 'I'. Mr.Vora, the learned advocate for the petitioner submitted that the petitioner was always willing to accept any such appointment which was given to said Shri Dharamshimbai Desai by Annexure 'F' dated 16.3.1990.

5. Mr.Joshi is not able to point out anything as to what were the reasons which weighed with the authorities for denying that opportunity to the petitioner and giving such appointment to said Shri Dharamshibhai Desai. In absence of any explanation coming forward from the authorities, it becomes clear that it is only for some extraneous considerations the case of the petitioner was not considered and the case of said Shri Dharamshibhai was considered by the authorities.

6. Mr.Vora, learned advocate for the petitioner also pointed out that said Dharamshibhai is now given appointment on permanent basis. The petitioner, being a person incapable of getting a copy of appointment order of said Shri Dharamshibhai appointing him on permanent basis, and who is only able to make a statement on oath before this court, this Court has no reason to disbelieve the said statement of the petitioner. In the facts and circumstances of the case, the petition is allowed. The respondent authorities are directed to consider the case of the petitioner in light of the relevant rules, regulations, circulars and resolutions of the Government within eight weeks from the date of the receipt of the writ of this Court. The authorities shall also consider the case of the petitioner for giving him the benefits from the date when his junior, said Shri Dharamshibhai Ghelabhai Desai was given duties for 4 hours a day and thereafter six hours a day and ultimately appointing him on permanent basis.

7. In fact this is a case which is required to be allowed with cost as the petitioner for no fault of his, was required to approach this Court by this petition. In fact, if the authorities were vigilant enough to comply with their own circulars/ GRs, the petitioner would not have been required to approach this Court. Therefore, the respondent authorities are directed to pay cost of

Rs.1,500.00 (Rupees one thousand and five hundred only) to the petitioner. The Government may recover the said amount of cost from the erring officers on account of whose default the petitioner was required to approach this Court, if it decides to do so.

8. The petition is allowed accordingly. Rule is made absolute subject to the aforesaid order of costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

karim*